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United States Attorney

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8 Attorneys for Federal Defendants
Petaluma Valley Hospital and
Fasih Hameed, M.D.

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 A.M., a minor by and through his Guardian Ad) Case No.
14 Litem; MARY MCQUINN; and MICHAEL)
MCQUINN;)

15 Plaintiffs,)

16) NOTICE OF REMOVAL OF CIVIL ACTION

17 v.)

18 PETALUMA VALLEY HOSPITAL; ST.)
JOSEPH HEALTH SYSTEM; ST. JOSEPH)
HEALTH SYSTEM, DBA PETALUMA)
VALLEY HOSPITAL; FASIH HAMEED, MD;)
ANTHONY KOSINSKI MD; JULIE DIANE)
CLARK, MD; VICTORIA ANQUE-)
CABEZAS, RN; PAMELA ANN KOCH, RN;)
VICTORIA LASS, RN; S. MASTERSON, RN;)
DOES 1 through 20, inclusive,)

22 Defendants.)

23
24
25 Superior Court of Sonoma County, See Proof of Service for Service List
26 Hall of Justice
600 Administration Drive, Room 107J
27 Santa Rosa, CA 95403

28 NOTICE OF REMOVAL
A.M., a minor, McQuinn v. Petaluma Valley Hosp. et al

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1 PLEASE TAKE NOTICE that on this day case no. SCV 254872 pending before the Sonoma
2 County Superior Court, Hall of Justice, Civil Unlimited Jurisdiction is being removed to the United
3 States District Court for the Northern District of California pursuant to 28 U.S.C. § 1442 on behalf of
4 federal defendants Petaluma Valley Hospital (“PVH”) and Fasih Hameed, M.D. (“Hameed”). Upon
5 direction by the Attorney General of the United States and pursuant to 28 U.S.C. § 1446, the
6 undersigned attorneys hereby present the following facts to the Judges of the United States District
7 Court for the Northern District of California.

8 1. On January 14, 2014, plaintiff A.M., a minor by and through his Guardian Ad Litem, Mary
9 McQuinn and Michael McQuinn, filed a summons and complaint in the Sonoma County Superior Court.
10 The complaint was filed against defendants PVH et al. Plaintiff alleged that between March 2012 and
11 October 2012, defendant Hameed failed to properly diagnose and treat his mother, plaintiff Mary
12 McQuinn, during prenatal care and delivery. As a result, plaintiff A.M. alleged that he sustained
13 permanent and severe brain damage to all cortices of his brain. (See Exhibit 1 – summons and
14 complaint).

15 2. On August 22, 2014, the United States Attorney's Office received notification from the
16 Department of Health and Human Services (“DHHS”) regarding this pending lawsuit. The summons
17 and complaint filed in the Sonoma County Superior Court, Hall of Justice, Civil Unlimited Jurisdiction
18 has not been served on the United States Attorney's Office as required by Rule 4(i)(1)(A)(i)(ii), Fed. R.
19 Civ. P.

20 3. This action must be removed to the federal district court because this action is against a
21 federally supported health center and a health center doctor. Pursuant to the Federal Tort Claims Act
22 (“FTCA”) and the Federally Supported Health Centers Assistance Act, 42 U.S.C. § 233(g)-(n), Petaluma
23 Health Centers are deemed eligible for FTCA malpractice coverage and its employees are covered under
24 the FTCA on January 1, 2012. Further, Fasih Hameed, M.D. is an employee of the health center and
25

26 **NOTICE OF REMOVAL**
27 **A.M., a minor, McQuinn v. Petaluma Valley Hosp. et al**

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1 was acting within the scope of his employment at all times material to such alleged incidents. (See
 2 Certification of A. Tse).

3 4. Upon certification by the Attorney General, this action shall be removed to the District Court
 4 any time prior to trial. Pursuant to written delegation from Melinda Haag, the duly appointed United
 5 States Attorney for the Northern District of California, the Chief of the Civil Division has been
 6 authorized to exercise on behalf of the United States Attorney the authority vested in him by the
 7 Attorney General, pursuant to 28 C.F.R. § 15.4. The Chief of the Civil Division has certified that Fasih
 8 Hameed, M.D. was acting within the course and scope of his employment with PVH, which is deemed
 9 eligible for FTCA malpractice coverage. *See* Certification Pursuant to 28 U.S.C. § 2679(d). This
 10 certification is conclusive for purposes of removal. 28 U.S.C. § 2679(d)(2).

11 5. Upon removal the United States is automatically substituted for federal defendants PVH and
 12 Hameed and this action will proceed as an action against the United States of America pursuant to 28
 13 U.S.C. § 1442.

14 6. This action is one arising under the Constitution and Laws of the United States, and it is
 15 therefore an action over which the District Courts of the United States have original jurisdiction. A civil
 16 action in state court seeking damages from federal officials for acts taken under color of federal office
 17 may be removed to federal court provided that the defendant has a colorable federal defense or can
 18 otherwise articulate a connection between the performance of his duties and the acts or omissions
 19 alleged. See 28 U.S.C. § 1331. It is removable to this court pursuant to 28 U.S.C. § 1441(a), (b) (1988).

20 7. A federal defendant removing under Section 1442 must demonstrate three things - that it is a
 21 "person" within the meaning of the statute, that there is a "casual nexus" between its actions and
 22 plaintiff's claim, and that it can assert a "colorable federal defense." *Durham v. Lockheed*, 445 F.3d
 23 1247, 1251 (9th Cir. 2006). Here, the federal defendant has met the three-part test for removal set forth
 24 in Durham. Moreover, with respect to the third requirement, "colorable" is interpreted broadly because
 25 "one of the most important reasons for removal is to have the validity of the defense of official
 26 immunity tried in a federal court." *Jefferson County, Ala. v. Acker*, 527 U.S. 423, 431 (1999).

27 **NOTICE OF REMOVAL**

28 **A.M., a minor, McQuinn v. Petaluma Valley Hosp. et al**

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8. A copy of this Notice is being filed with the Clerk of the Sonoma County Superior Court.

This filing will automatically effect the removal action described above in its entirety to this Court for all future proceedings pursuant to 28 U.S.C. § 1446(d).

Respectfully submitted,

MELINDA HAAG
United States Attorney

Neim

NEILL T. TSENG

Attorneys for Federal Defendants
Petaluma Valley Hospital and
Fasih Hameed, M.D.

Dated: August 29, 2014

NOTICE OF REMOVAL

A.M., a minor, McQuinn v. Petaluma Valley Hosp. et al

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EXHIBIT 1

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: PETALUMA VALLEY HOSPITAL, ET.
(AVISO AL DEMANDADO): JOSEPH HEALTH SYSTEM, ST. JOSEPH
HEALTH SYSTEM, DBA PETALUMA VALLEY HOSPITAL; NASTI
KAMERED, M.D.; ANTHONY ROBINSKI, M.D.; JULIE DIANE
CLARK, M.D.; VICTORIA ANGUE-CABELAS, R.N.; PAMELA ANN
KOCH, R.N.; VICTORIA LASS, R.N.; S. WASTERBON, R.N.;
and DOES 1 - 20, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: A [REDACTED] [REDACTED FOR]
(LO ESTÁ DEMANDANDO EL DEMANDANTE) by and through his
Guardian Ad Litem; MARY McQUINN; and MICHAEL McQUINN.

SUM-100
FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)
ENDORSED FILED
FEB 14 2014
SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff or their attorney to protect you. Your written response must be in proper legal form if you want the court to hear your case. This is the last day you can sue for your response. You can find these forms from the Superior Court Clerk's Office, 100 Civic Center Drive, Santa Rosa, CA 95401, or online at www.sonoma.ca.gov/courtinfo/forms.htm. If you do not know how to file your response, ask the court clerk for a free self-help pamphlet. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without notice from the court.

There are other legal requirements. You may want to call the court for help anyway. If you do not know your attorney, you may want to call an attorney referral service. You cannot afford an attorney, you may be eligible for legal services from a non-profit legal services organization. You can locate these services online at the California Legal Services Web site (www.calleg.org) or at the California Courts Online Self-Help Center (www.courtselfhelp.ca.gov). If you are having trouble understanding your rights or what to do, contact a lawyer. **NOTE:** The following is a statutory list for waived fees and costs on any summons or complaint filed before April 1, 2010. This court's fee rules do not apply before the court will dismiss the case.

AVISO! La otra demandada. Si no responde dentro de 30 días, el juez puede decidir en su contra sin escuchar su versión. Lee la información al continuación.

Tiene 30 DÍAS DE CALENDARIO después de que se entregó esta citación y papeles legales para presentar una respuesta por escrito en este caso y hacer que se entregue una copia al demandante. Una carta o una notificación escrita no lo protegen. Su respuesta por escrito tiene que estar en formato legal contesta a las cosas que presentan al caso en la corte. Si no tiene una copia escrita para presentar como su respuesta, puede encontrar estos formularios de la corte y llenarlos en el Centro del Pueblo, 100 Civic Center Drive, Santa Rosa, CA 95401, en la biblioteca de libros de su condado o en la corte que le pague más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario dispensado de pago de cuotas. Si no tiene acceso a su respuesta o deje, puede pedir al secretario de la corte la respuesta en su nombre o en su nombre y dirección.

Si no tiene acceso a un abogado, puede llamar a un bufete de abogados. Si no conoce a un abogado, puede llamar a un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos en línea en www.calleg.org o en el Servicio de Asistencia Legal de Sonoma (www.sonomalegal.org). En el fondo de la parte de los formularios de la corte figura la sección de goce o documentación en cumplimiento con la sección 415.410 de la CCP. Si no conoce a un abogado, puede llamar a la Oficina de Abogados Procuradores de la Corte de Sonoma (www.sonoma.ca.gov/courtinfo/prosecutors.htm). Puede obtener información de \$10,000.00 mes de voluntad de pago y un acuerdo de suscripción de acuerdo con la sección 415.410 de la CCP. Tenga que pagar el servicio de la corte antes de que la corte pueda desear su caso.

The name and address of the court is:

(El nombre y dirección de la corte es):
Superior Court of Sonoma
600 Administration Drive

Santa Rosa 95403

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Theo J. Emison (SBN 209183)
Emison Hullerson LLP
1005 Sansome Street, Suite 330
San Francisco, CA 94111 JOSE O. GUILLEN

415-434-2112
GRISELDA ZAVALA

DATE: Clerk by _____, Deputy
(FECHA): _____ (Secretario): _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons form POS-010).
(Para prueba de entrega de este citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are advised

1. as an individual defendant.

2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation)

CCP 416.20 (defunct corporation)

CCP 416.40 (association or partnership)

other (specify):

CCP 416.80 (minor)

CCP 416.70 (conservator)

CCP 416.80 (authorized person)

4. by personal delivery on (date):

Form Adopted for Maricopa County
Administrative Council of California
SUM-100 (Rev. July 1, 2008)

SUMMONS

Legal
Services
Co. Inc.

Page 1 of 1
Code of Civil Procedure § 8412.23, 2008

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State bar number, and address): THOM J. Wilson (SBN 209183) Cusion Holliverson LLP 1005 Sonoma Street, Suite 330 San Francisco, CA 94111 TELEPHONE: 415-434-2111 (REDACTED) FAX: 415-434-2112 (REDACTED)		FOR COURT USE ONLY OM-010															
JURISDICTIONAL INFORMATION: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA STREET ADDRESS: 600 Administration Drive MAILING ADDRESS: CITY AND ZIP CODE: Santa Rosa 95403 JURISDICTION		ENDORSED FILED JAN 14 2014 SUPERIOR COURT OF CALIFORNIA COUNTY OF SONOMA															
CASE NAME: McQuinn v. Petaluma Valley Hospital, et al.		CASE NUMBER: SCV254872															
CIVIL CASE COVER SHEET <table border="1" style="float: right; border-collapse: collapse; width: 150px;"> <tr> <td style="padding: 2px;"><input checked="" type="checkbox"/></td> <td style="padding: 2px;">Unlimited</td> <td style="padding: 2px;"><input type="checkbox"/></td> <td style="padding: 2px;">Limited</td> </tr> <tr> <td style="padding: 2px;">(Amount demanded)</td> <td style="padding: 2px;">(Amount demanded exceeds \$25,000, \$25,000 or less)</td> <td style="padding: 2px;"><input type="checkbox"/></td> <td style="padding: 2px;">(Amount demanded is \$25,000 or less)</td> </tr> </table>		<input checked="" type="checkbox"/>	Unlimited	<input type="checkbox"/>	Limited	(Amount demanded)	(Amount demanded exceeds \$25,000, \$25,000 or less)	<input type="checkbox"/>	(Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joiner <input type="checkbox"/> Filed with first appearance by defendant <small>(Cal. Rules of Court, rule 3.402)</small>							
<input checked="" type="checkbox"/>	Unlimited	<input type="checkbox"/>	Limited														
(Amount demanded)	(Amount demanded exceeds \$25,000, \$25,000 or less)	<input type="checkbox"/>	(Amount demanded is \$25,000 or less)														
<small>Items 1-4 below must be completed (see instructions on page 2):</small>																	
<p>1. Check one box below for the case type that best describes this case:</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50px; vertical-align: top;"> <input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) </td> <td style="width: 50px; vertical-align: top;"> <input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collection (08) </td> <td style="width: 50px; vertical-align: top;"> <input type="checkbox"/> Provisionally Complex Civil Litigation <small>(Cal. Rules of Court, rules 3.403-3.405)</small> </td> </tr> <tr> <td> <input type="checkbox"/> Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input checked="" type="checkbox"/> Medical malpractice (48) <input type="checkbox"/> Other PI/PD/WD (22) </td> <td> <input type="checkbox"/> Counterclaim (08) <input type="checkbox"/> Other collections (08) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) </td> <td> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (24) </td> </tr> <tr> <td> <input type="checkbox"/> Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business by/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (15) <input type="checkbox"/> Fraud (16) </td> <td> <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) </td> <td> <input type="checkbox"/> Environmental/civil tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) </td> </tr> <tr> <td> <input type="checkbox"/> Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other Employment (16) </td> <td> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (36) </td> <td> <input type="checkbox"/> Enforcement of Judgment <small>(Cal. Rules of Court, rule 3.406)</small> </td> </tr> <tr> <td></td> <td> <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) </td> <td> <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) </td> </tr> </table>			<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collection (08)	<input type="checkbox"/> Provisionally Complex Civil Litigation <small>(Cal. 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<p>2. This case <input type="checkbox"/> is <input checked="" type="checkbox"/> not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:</p> <p>a. <input type="checkbox"/> Large number of separately represented parties d. <input type="checkbox"/> Large number of witnesses</p> <p>b. <input type="checkbox"/> Extensive motion practice relating difficult or novel issues that will be time-consuming to resolve e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, cities, or countries, or in a federal court</p> <p>c. <input type="checkbox"/> Substantial amount of documentary evidence f. <input type="checkbox"/> Substantial postjudgment judicial supervision</p> <p>3. Remedies sought (check all that apply): a. <input checked="" type="checkbox"/> monetary b. <input type="checkbox"/> nonmonetary; declaratory or injunctive relief c. <input type="checkbox"/> punitive</p> <p>4. Number of causes of action (specify): Five (5) (Med Neg-Aldeco, Med Neg/HIER-Navy, Med Neg/HIER Michaelis LOG-Navy, x/o Michael)</p> <p>5. This case <input type="checkbox"/> is <input checked="" type="checkbox"/> not a class action suit.</p> <p>6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)</p> <p>Date: January 14, 2014</p> <p>Plaintiff: J. Wilson (SBN 209183)</p>																	
<p style="text-align: center;">NOTICE</p> <ul style="list-style-type: none"> • Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions. • File this cover sheet in addition to any cover sheet required by local court rule. • If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. • Unless this is a collection case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only. 																	
<p style="text-align: center;">CIVIL CASE COVER SHEET</p> <p style="text-align: right;">Page 1 of 1</p> <p style="text-align: center;">Legal Settlement Small Claims Superior Court Probate Family Probate Court Welfare & Institutions Court Services Court Forms Court Help Court News Court Search Court Locations Court Help Court News Court Search Court Locations</p>																	

BY FAX

RECEIVED
JAN 17 2014
REGISTRATION

ENDORSED
FILED
JAN 14 2014

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

1 THEO J. EMMISON (SBN: 209183)
2 EMMISON HULLVERSON LLP
3 1005 Sansome St., Suite 330
4 San Francisco, CA 94111
5 Tel: (415) 434-2111
6 Fax: (415) 434-2112
7 Attorneys for Plaintiffs

P

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SONOMA

10
11 A [REDACTED] M [REDACTED FOR P] a minor by and through his
12 Guardian Ad Litem;
13 MARY McQUINN; and
14 MICHAEL McQUINN;

Case No.: SCV254872

Plaintiffs,

15 vs.
16 PETALUMA VALLEY HOSPITAL;
17 ST. JOSEPH HEALTH SYSTEM;
18 ST. JOSEPH HEALTH SYSTEM, DBA
19 PETALUMA VALLEY HOSPITAL;
20 FASIH HAMEED, M.D.;
21 ANTHONY KOSINSKI, M.D.;
22 JULIE DIANE CLARK, M.D.;
23 VICTORIA ANQUE-CABEZAS, R.N.;
24 PAMELA ANN KOCH, R.N.;
25 VICTORIA LASS, R.N.;
26 S. MASTERSON, R.N.; and
27 DOB'S 1 - 20, inclusive;

Defendants.

COMPLAINT FOR DAMAGES FOR:

1. [REDACTED FOR P] GENCE;
2. MEDICAL NEGLIGENCE / NIED;
MARY McQUINN
3. MEDICAL NEGLIGENCE / NIED;
MICHAEL McQUINN
4. LOSS OF CONSORTRIUM;
MARY McQUINN
5. LOSS OF CONSORTRIUM;
MICHAEL McQUINN

JURY TRIAL DEMANDED

28 Plaintiffs A [REDACTED] M [REDACTED FOR P] a minor by and through his Guardian Ad Litem, MARY
29 McQUINN, and MICHAEL McQUINN (collectively, "Plaintiffs") allege as follows:

PARTIES

1. Plaintiff A [REDACTED] M [REDACTED FOR P] is a minor and resides with his parents in the City of Petaluma,

COMPLAINT

1 County of Sonoma, State of California. An application will be made to appoint a Guardian Ad
2 Litem for Plaintiff A [REDACTED] M [REDACTED] A [REDACTED] date of birth is [REDACTED FOR PRIVACY]

3 2. Plaintiff's Mary McQuinn and Michael McQuinn reside in the City of Petaluma, County
4 of Sonoma, State of California. At all relevant times, Mary and Michael were, and presently are,
5 married. Mary and Michael are A [REDACTED]'s parents and are responsible for his care.

6 3. At all relevant times, defendants Petaluma Valley Hospital, St. Joseph Health System,
7 and St. Joseph Health System DBA Petaluma Valley Hospital, were and now are business
8 organizations engaged, in the County of Sonoma, State of California, in the business of owning,
9 operating, and maintaining medical centers, health care facilities, and/or hospitals and employing
10 physicians, surgeons, nurses and other health care providers practicing their profession at said
11 hospital.

12 4. At all relevant times, defendants Fasih Hameed, M.D., Anthony Kosinski, M.D., and
13 Julie Diane Clark, M.D., were and now are physicians engaged in the practice of medicine in the
14 County of Sonoma, State of California.

15 5. At all relevant times, defendants Victoria Anque-Cabezas, R.N., Pamela Ann Koch, R.N.,
16 Victoria Lass, R.N., and S. Masterson, R.N., were and now are registered nurses engaged in the
17 practice of nursing in the County of Sonoma, State of California.

18 6. Plaintiffs are unaware of the true names and capacities of the defendants sued herein as
19 DOES 1 – 20, inclusive, and therefore sue these defendants by such fictitious names pursuant to
20 Code of Civil Procedure Seci 474. Plaintiffs will amend this Complaint to allege their true
21 names and capacities when ascertained.

22 7. Reference to "DEFENDANT" or "DEFENDANTS" shall refer individually and _____
23 collectively to each and every specifically and fictitiously named defendant.

24 8. Plaintiffs are informed and believe, and on that basis allege, that at all relevant times,
25 each and every DEFENDANT was the actual or ostensible authorized agent or agent by
26 ratification, principal, servant, master, permittee, employee, employer, partner, alter ego, or joint
27 venturer of, and/or was working in concert with, each and every other DEFENDANT, and in
28 doing the things alleged, each and every DEFENDANT was acting within the course and scope

1 of such agency, permission, employment, partnership, concerted activity, and/or other
 2 relationship. To the extent certain acts and/or omissions were perpetrated by certain
 3 defendant(s), each and every other DEFENDANT authorized, consented to, confirmed,
 4 controlled and/or ratified each and every such act and/or omission.

5 Plaintiff's are informed and believe, and on that basis allege, that each and every
 6 DEFENDANT is responsible, negligently, intentionally, or in some other actionable manner, for
 7 the events and happenings referred to herein, that each Plaintiff's damages were directly and
 8 proximately caused by each and every DEFENDANT, that the damages are within the
 9 jurisdictional limits of this Court, and that Plaintiffs are entitled to the relief requested herein
 10 against each and every DEFENDANT.

TIMELINESS OF THE COMPLAINT

11 10. Plaintiff A [REDACTED] M [REDACTED FOR PRIVACY] first suffered appreciable harm on the day of his birth [REDACTED FOR PRIVACY]
 12 [REDACTED FOR PRIVACY] The filing of this Complaint within three years of that date and well before his eighth
 13 birthday satisfies the statute of limitations set forth in CCP Section 340.5. With respect to A [REDACTED]
 14 M [REDACTED FOR PRIVACY] this Complaint is timely filed.

15 11. Within 90 days of the expiration of the relevant statute of limitation that governs Plaintiff
 16 Mary McQuinn's and Michael McQuinn's respective claims, Plaintiff's cause to be sent
 17 appropriate notices pursuant to the provision of CCP Section 364 to DEFENDANTS and/or their
 18 authorized agents. In accord with relevant case law, the sending of such notices operated to
 19 extend the statute of limitations set forth in CCP Section 340.5. This Complaint is timely filed
 20 within the time prescribed by law after the sending of such notices.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

21 12. Beginning in March 2012, and continuing through and including the date of A [REDACTED]
 22 M [REDACTED FOR PRIVACY] Mary McQuinn was a patient of DEFENDANTS and
 23 consulted with, employed, and contracted with DEFENDANTS to provide all medical diagnosis,
 24 care, and treatment to Mary and A [REDACTED] M [REDACTED FOR PRIVACY] in connection with Mary's pregnancy with, and
 25 labor and delivery of, A [REDACTED]

26 13. Pursuant to that physician-patient relationship, employment, and contract, at all relevant
 27

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1 times, DEFENDANTS undertook to provide for consideration, and were obligated to provide, all
2 medical diagnosis, care and treatment to Mary and A [REDACTED] M [REDACTED FOR] consistent with the
3 applicable standards of care necessary to maximize the protection of both Mary McQuinn and
4 her unborn child, A [REDACTED] M [REDACTED FOR] and to maximize the possibility that A [REDACTED] M [REDACTED FOR] would
5 be born without avoidable injury.

6 14. At all relevant times DEFENDANTS negligently failed to exercise the proper degree of
7 skill, knowledge and care in their medical diagnosis, care and treatment of Mary and A [REDACTED]
8 M [REDACTED FOR]

9 15. Specifically, and without limitation, at around 4:30 a.m., on [REDACTED] Mary
10 McQuinn arrived at Petaluma Valley Hospital in labor. Fetal monitoring was connected to
11 monitor Mary's unborn son, A [REDACTED] M [REDACTED FOR] At or before 5:30 a.m., the fetal monitoring
12 reflected that A [REDACTED] was in severe distress and that an emergency cesarean was necessary. The
13 severity of A [REDACTED] distress, however, was initially misread as less severe than it in fact was.
14 That negligent interpretation of A [REDACTED] distress level caused unnecessary and avoidable delay in
15 the performance of a cesarean.

16 16. Roughly 20 minutes later, at about 5:50 a.m., as A [REDACTED] level of distress remained
17 severe, the Petaluma Valley Hospital nurse staff informed the attending doctor, defendant Dr.
18 Hameed, that he needed to call for a stat (i.e., emergency) cesarean. As stated in the medical
19 record:

20
21 5:30 a.m.: "Encouraged Dr. Hameed to call for c/s [i.e., a
22 cesarean], my thoughts were abruptio. [...] I explained that I
23 thought as soon as Dr. Kosinski arrived he would call a stat c/s."

24 17. Despite the nursing staff's urging that Dr. Hameed call for a cesarean, Dr. Hameed did
25 not do so, causing additional, unnecessary and avoidable delay.

26 18. Thirty minutes later, at about 6:00 a.m., the nursing notes reflect that the nurse got tired of
27 waiting for Dr. Hameed to call Dr. Kosinski and undertook to do so herself:
28 ///

1 6:00 a.m.: "After paging Dr. Kosinski to find out his ETA, he
2 stated he didn't know about this patient. I handed the phone to Dr.
3 Hameed and they spoke. At that time Dr. Clark arrived on the unit
4 to see her own patients and Dr. Hameed consulted with her. CIS
5 was called and patient was consented. [...] Pt [i.e., patient] being
 educated about possible CIS by Dr. Hameed. Awaiting arrival of
 Dr. Kosinski. [...] Called for Respiratory [sic] and Pedi to stand by
 for urgent CIS."

6 19. Despite this clear indication that a cesarean was ordered by physicians at Petaluma
7 Valley Hospital at 6:00 a.m., for reasons not known at this time, Mary still was not taken for
8 cesarean, causing yet more unnecessary and avoidable delay.

9 20. Ten minutes later, the nurses paged Dr. Kosinski yet again to determine his ETA for the
10 urgent cesarean:

11 6:10 a.m.: "I paged Dr. Kosinski to determine ETA."

12 13. Five minutes later, at 6:15 a.m., there still was no progress towards a cesarean:

14 15. 6:15 a.m.: "RN started IVF to give IV bolus. Dr. Hameed informed
 to call Dr. Kosinski. To review strip and be here for possible
 c-section."

16 17. Fifteen minutes later, at 6:30 a.m., A [REDACTED] was still in severe distress. Yet still no progress
18 had been made towards a cesarean. The staff nurse again instructed Dr. Hameed to take action -
19 to call Dr. Kosinski in for the cesarean. Dr. Hameed responded with a shocking statement in
20 light of the severe and deteriorating distress of Mary's unborn son A [REDACTED]

21 22. 6:30 a.m.: "RN Anque-Cabezas told Dr. Hameed need to call Dr.
 Kosinski in for possible CIS. Dr. Hameed said he does not want
 to bother him"

23 24. After another fifteen minutes, at 6:45 a.m., the nurse was still urging Dr. Hameed to take
25 action - to call Dr. Kosinski in to perform a cesarean:

26 27. 6:45 a.m.: "RN Anque asked Dr. Hameed to place FSE to monitor
 FHR better at that time more clear fluid came out but FSB not on.
 I asked him to call Dr. Kosinski in or somebody that can do
 surgery."

1 24. Yet as late as 7:00a.m., the records reflect Dr. Kosinski was still not on scene. At that
2 time, the records reflect that Dr. Clark returned to Mary's bedside and at last took Mary in for
3 cesarean around 7:15a.m.

4 25. In sum, more than two and a half hours passed from the time a cesarean became
5 necessary to the time a cesarean was actually performed. DEFENDANTS' negligence caused
6 that inexcusable, unnecessary and avoidable delay.

7 26. DEFENDANTS' negligence includes, but is not limited to: (i) failing to timely recognize
8 the need for an emergency cesarean; (ii) failing to timely perform an emergency cesarean; and
9 (iii) refusing to timely call qualified physicians to the hospital to perform the emergency
10 cesarean..

FIRST CAUSE OF ACTION

MEDICAL NEGLIGENCE

[Plaintiff A] RECAUTE [REDACTED FOR] M [REDACTED FOR] against all DEFENDANTS)

14 27. Plaintiff A [REDACTED] M [REDACTED FOR] re-alleges and incorporates by this reference all preceding
15 paragraphs of this Complaint as though set forth here in their entirety.

16 28. Based on the foregoing, DEFENDANTS owed a duty to A [REDACTED] M [REDACTED] to use the
17 proper degree of skill, knowledge and care in their medical diagnosis, care and treatment of
18 Mary and A [REDACTED] M [REDACTED] in connection with Mary's pregnancy with, and labor and delivery of,

20 29. Based on the foregoing, DEFENDANTS negligently breached the duty of care they owed
21 to A [REDACTED] M [REDACTED] for

REDACTED FOR ATTORNEY
REDACTED FOR ATTORNEY

31. Specifically, and without limitation, as a direct and proximate result of DEFENDANTS' negligent acts, conduct, and omissions:

a. Plaintiff A [REDACTED] [REDACTED FOR] suffered permanent, severe and avoidable physical, neurological, and emotional injuries, including but not limited to severe brain damage to all cortices of his brain;

b. A ~~REASONABLE~~ MATERIAL has incurred, and will continue to incur, all past and future

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1 economic damages allowed by law in amounts according to proof at trial, including but not
2 limited to: (i) past and future medical and related expenses for physicians, surgeons, hospital
3 care, and other medical services and supplies, (ii) past and future expenses for specialized
4 education, teaching, training, cognitive and developmental therapies, psychological care, and
5 home care, and (iii) future economic damages for lost earning capacity and loss of ability to
6 provide household services; and

7 c. Plaintiff A [REDACTED] has incurred and will continue to incur all past and
8 future non-economic damages allowed by law in amounts according to proof at trial, including
9 but not limited to past and future damages for physical pain, mental anguish and emotional
10 distress, frustration, annoyance, anger, fear, worry, embarrassment, discomfort, and loss of
11 enjoyment of life.

12 **SECOND CAUSE OF ACTION**

13 **MEDICAL NEGLIGENCE: NIED**

14 [Plaintiff Mary McQuinn against all DEFENDANTS]

15 32. Plaintiff Mary McQuinn re-alleges and incorporates by this reference all preceding
16 paragraphs of this Complaint as though set forth here in their entirety.

17 33. Because of the physical and emotional connection between Mary McQuinn and her
18 unborn son, A [REDACTED] DEFENDANTS knew, or should have known, that negligence
19 causing physical injury to A [REDACTED] would also cause severe mental and emotional injury, distress,
20 and suffering to Mary.

21 34. Based on the foregoing, DEFENDANTS owed a duty to Mary McQuinn to use the
22 proper degree of skill, knowledge and care in their medical diagnosis, care and treatment of
23 Mary and A [REDACTED] in connection with Mary's pregnancy with, and labor and delivery of,
24 A [REDACTED] to avoid negligently inflicting physical injury upon A [REDACTED] and thereby avoid negligently
25 inflicting emotional injury on Mary.

26 35. Based on the foregoing, DEFENDANTS negligently breached the duty of care they owed
27 to Mary McQuinn.

28 36. DEFENDANTS' negligence was a substantial factor in causing harm to Mary McQuinn.

37. Specifically, and without limitation, as a direct and proximate result of DEFENDANTS' negligent acts, conduct, and omissions:

- a. Mary McQuinn suffered and continues to suffer severe emotional distress;
 - b. Mary McQuinn has incurred, and will continue to incur, all past and future economic damages allowed by law in amounts according to proof at trial; and
 - c. Mary McQuinn has incurred and will continue to incur all past and future non-economic damages allowed by law in amounts according to proof at trial.

THIRD CAUSE OF ACTION

MEDICAL NEGLIGENCE: NIÉD

[Plaintiff Michael McQuinn against all DEFENDANTS]

38. Plaintiff Michael McQuina re-alleges and incorporates by this reference all preceding paragraphs of this Complaint as though set forth here in their entirety.

39. DEFENDANTS knew, or should have known, that negligence causing physical injury to A [REDACTED] and emotional injury to Mary would also cause severe mental and emotional injury, distress, and suffering to Michael because:

a. the physician-patient, and contractual, relationship between DEFENDANTS and Mary McQuinn directly implicated Michael McQuinn's interests as Mary's husband and the father of their unborn son. A [REDACTED]

b. the physician-patient, and contractual, relationship between DEFENDANTS and Mary McQuinn also directly implicated the reproductive efforts of Mary and Michael McQuinn in which Michael had a personal interest; and

c. Michael McQuinn was a third-party beneficiary of Mary McQuinn's contract with

DEFENDANT'S to provide all medical diagnosis, care, and treatment to Mary and A [REDACTED]

~~REDACTED FOR~~ in connection with Mary's pregnancy with, and labor and delivery of, A ~~REDACTED~~

40. Based on the foregoing, DEFENDANTS owed a duty to Michael McQuinn to use the proper degree of skill, knowledge and care in their medical diagnosis, care and treatment of Mary and A [REDACTED] M [REDACTED FOR] in connection with Mary's pregnancy with, and labor and delivery of, A [REDACTED] to avoid negligently inflicting physical injury upon A [REDACTED] and emotional injury on Mary,

1 and thereby avoid negligently inflicting emotional injury on Michael.

2 41. Based on the foregoing, DEFENDANTS negligently breached the duty of care they owed
3 to Michael McQuinn.

4 42. DEFENDANTS' negligence was a substantial factor in causing harm to Michael
5 McQuinn.

6 43. Specifically, and without limitation, as a direct and proximate result of DEFENDANTS'
7 negligent acts, conduct, and omissions:

- 8 a. Michael McQuinn suffered and continues to suffer severe emotional distress;
- 9 b. Michael McQuinn has incurred, and will continue to incur, all past and future
10 economic damages allowed by law in amounts according to proof at trial; and
- 11 c. Michael McQuinn has incurred and will continue to incur all past and future non-
12 economic damages allowed by law in amounts according to proof at trial.

13 **FOURTH CAUSE OF ACTION**

14 **LOSS OF CONSORTIUM**

15 [Plaintiff Mary McQuinn against all DEFENDANTS]

16 44. Plaintiff Mary McQuinn re-alleges and incorporates by this reference all preceding
17 paragraphs of this Complaint as though set forth here in their entirety.

18 45. As a further direct and proximate result of DEFENDANTS' negligent acts, conduct, and
19 omissions and the resulting emotional injury to her husband Michael McQuinn, Plaintiff Mary
20 McQuinn suffered the past and future loss of all elements of her husband's consortium, all to her
21 damage in amounts according to proof at trial.

22 **FIFTH CAUSE OF ACTION**

23 **LOSS OF CONSORTIUM**

24 [Plaintiff Michael McQuinn against all DEFENDANTS]

25 46. Plaintiff Michael McQuinn re-alleges and incorporates by this reference all preceding
26 paragraphs of this Complaint as though set forth here in their entirety.

27 47. As a further direct and proximate result of DEFENDANTS' negligent acts, conduct, and
28 omissions and the resulting emotional injury to his wife Mary McQuinn, Plaintiff Michael

1 McQuinn suffered the past and future loss of all elements of his wife's consortium, all to his
2 damage in amounts according to proof at trial.

PRAYER FOR RELIEF

4 WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS, and each of
5 them, jointly and severally, as follows:

First Cause of Action: Medical Negligence (A _____ M _____):

1. For past and future economic damages according to proof trial;
 2. For past and future non-economic damages according to proof at trial;
 3. For costs of suit;
 4. For pre-judgment interest as allowed by law; and,
 5. For such other and further relief as the Court deems just and proper.

Second Cause of Action: Medical Negligence / NIED (Mary McQuinn):

- 13 1. For past and future economic damages according to proof at trial;

14 2. For past and future non-economic damages according to proof at trial;

15 3. For costs of suit;

16 4. For pre-judgment interest as allowed by law; and,

17 5. For such other and further relief as the Court deems just and proper.

Third Cause of Action: Medical Negligence / NIED (Michael McQuinn):

- 19 1. For past and future economic damages according to proof trial;

20 2. For past and future non-economic damages according to proof at trial;

21 3. For costs of suit;

22 4. For pre-judgment interest as allowed by law; and,

23 5. For such other and further relief as the Court deems just and proper.

Fourth Cause of Action: Loss of Consortium (Mary McQuint):

- 25 1. For past and future economic damages according to proof at trial;

26 2. For past and future non-economic damages according to proof at trial;

27 3. For costs of suit;

28 4. For pre-judgment interest as allowed by law; and,

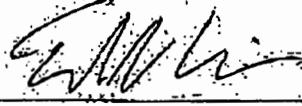
1 5. For such other and further relief as the Court deems just and proper.

2 **Fifth Cause of Action: Loss of Consortium (Michael McQuinn):**

- 3 1. For past and future economic damages according to proof trial;
- 4 2. For past and future non-economic damages according to proof at trial;
- 5 3. For costs of suit;
- 6 4. For pre-judgment interest as allowed by law; and,
- 7 5. For such other and further relief as the Court deems just and proper.

8 Dated: January 14, 2014

EMISON HULLVERSON LLP

9 By: 

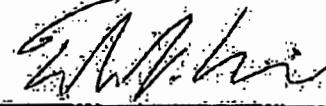
10 Theo J. Emison III
11 Attorney for Plaintiffs

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs hereby demand a trial by jury on their causes of action against DEFENDANTS.

14 Dated: January 14, 2014

EMISON HULLVERSON LLP

15 By: 

16 Theo J. Emison III
17 Attorney for Plaintiffs

18 EMISON HULLVERSON LLP
19 ATTORNEYS AT LAW

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COMPLAINT